IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

CHARLES KAY,

Petitioner

VERSUS

LEROY N. STYNCECOMBE,
SHERIFF OF FULTON COUNTY,

Respondent

PETITION FOR REHEARING

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Petitioner respectfully requests the Court to grant a rehearing in the above-styled case, upon the following grounds which petitioner believes are substantial and were not previously presented to the Court.

1.

RELIANCE BY COURT BELOW UPON PRESUMPTION OF VALIDITY OF GOVERNOR'S WARRANT WAS UNJUSTIFIED AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS OF LAW

The Court below relied wholly upon the Governor's warrant and the "presumption of its validity," holding

that "there is a presumption that the Governor complied with the Constitution and the law, and this presumption continues until the contrary appears" (R. 117-119; App. 25A).

This holding, under the factual situation of this case which will be summarized in a moment, is in conflict with the following decisions of this Court:

Ross v. United States, 92 U.S. 281, 283-284, holding that "No inference of fact or of law is reliable drawn from premises which are uncertain."

Manning v. Insurance Co., 100 U.S. 693, 698, holding that "The only presumptions of fact which the law recognizes are immediate inferences from facts proved."

Tot v. United States, 319 U.S. 463, where this Court struck down a statutory presumption, holding, pages 467-468. "Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience."

Pennsylvania Railroad Co. v. Chamberlain, 288 U.S. 333, 340-341, holding that a rebuttable inference of fact "must necessarily yield to credible evidence of the actual occurrence," and that where a party's case is based upon an inference, "the case must fail upon proof of undisputed facts inconsistent with such inferences." The foregoing language is particularly applicable to the instant case, where the presumption of validity of the Governor's warrant was rebutted and was clearly inconsistent with "credible evidence of the actual occurrence." The factual situation militating against and

overcoming the presumption of validity in the instant case was as follows:

> *First,* the petitioner swore under oath and without contradiction that the supporting documents referred to in the extradition warrant "not only failed to establish probable cause for believing the person accused therein to be guilty of an offense, but affirmatively showed he was not guilty of the offense attempted to be charged therein" (R. 6-16; App. 4A).
>
> *Second,* there was introduced in evidence without objection or contradiction the "authorization" of the Governor of Michigan containing no reference whatsoever to being based upon an indictment or affidavit (R. 13-14; 52; App. 5A).
>
> *Third,* any possible presumption of validity of the Governor's warrant is negated by the Governor's failure to comply with *Georgia Code 44-408,* which specifically requires him to recite in the warrant the facts necessary to the validity of its issuance; and of course one of the jurisdictional facts is that the requisition was based on an indictment or affidavit.
>
> *Fourth,* the respondent deliberately elected not to produce the "entire extradition proceeding" documents which he claimed to have in his possession. He thus failed to rebut the petitioner's sworn allegation mentioned above, and failed to overcome the obvious deficiencies in the requisition or authorization of the Governor of Michigan. He also failed satisfactorily to account for the failure of Governor Maddox to abide by *Georgia Code 44-408, supra,* commanding recital of jurisdictional facts necessary to the warrant's validity.

Petitioner concedes that if the Governor's warrant had recited those jurisdictional facts—i.e., that it was based upon an indictment or affidavit—a strong pre-

sumption of validity would arise. But where the Governor or any other public official does not even claim to have met the applicable constitutional and statutory requirements, there can be no presumption that his act was valid.

2.

PETITIONER WAS DEPRIVED OF EQUAL PROTECTION OF LAW BY THE LOWER COURT'S DECISION WHICH HOLDS IN EFFECT THAT STATE REQUIREMENTS FOR ARREST WARRANTS GENERALLY DO NOT APPLY TO ARREST WARRANTS ISSUED BY THE GOVERNOR

Georgia Code 27-103, 27-103.1 and *27-105* (*Acts 1962, p. 668*) require all arrest warrants to recite the time, date, place of occurrence of alleged offense, against whom committed, the specific charge and all basic particulars thereto. None of these recitals are contained in the Governor's warrant under which petitioner has been arrested. This point was raised in the trial court (R. 2), and was urged in the Court below (R. 113-115, 120-124; App. 22A, 28A), as violating petitioner's right under the Fourteenth Amendment to equal protection of the laws. There is no reasonable or logical basis for any distinction in standards for arrest warrants generally, and arrest warrants issued by the Governor. A prisoner who is arrested and held illegally can derive small comfort from the fact that the arrest warrant was signed by the Governor, rather than an ordinary magistrate.

CONCLUSION

For the reasons stated, the petition for rehearing should be granted and the writ of certiorari should issue.

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COUNSEL'S CERTIFICATE OF GOOD FAITH AND CERTIFICATE OF SERVICE

The undersigned counsel for petitioner hereby certifies that the foregoing petition for rehearing is filed in conformity with Rule 58 of the Rules of this Court; that it is not filed for delay; that it is filed in good faith; that the grounds of said petition are restricted to grounds which he believes are substantial and which were not previously presented to the Court. The undersigned counsel further certifies that a copy of the foregoing petition has this date been mailed, postage prepaid, to counsel for respondent, Hon. Carter Goode, Assistant District Attorney, Fulton County Courthouse, Atlanta, Georgia 30303.

This 20th day of March, 1969.

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